

January 22, 2004

David Kelsey
President
South Beach Hotel and Restaurant Association
407 Lincoln Road, Suite 12H
Miami Beach, FL 33139

RE: REQUEST FOR ADVISORY OPINION 04-08

Dear Mr. Kelsey:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on January 21, 2004 and rendered its opinion based on the facts stated in your request.

As President of the South Beach Hotel and Restaurant Association, you requested an opinion asking whether the Association meets the definition of a “neighborhood association” under the proposed “Lobbyist” exemptions defined in the Lobbyist Ordinance of the City of Miami Beach.

According to the facts submitted in your letter, the Association is a small Florida not-for-profit corporation serving the hotels, restaurants and nightclubs located within the tourist district of South Beach. The Association appears before the Miami Beach City Commission, the City Planning Board and other city committees on behalf of its general membership and on behalf of tourism issues. On occasion, it appears before such entities on behalf of a specific segment of the membership, its small hotels and restaurants. The Association engages in other activities such as educational workshops for City of Miami Beach officials and personnel, and at times, it sends letters, reports or memos to City officials and administrators related to industry concerns. The Association receives no specific or direct compensation for these appearances or activities.

The Ethics Commission determined that the Association does not meet the definition of “neighborhood association” and thereby, fall under the “Lobbyist” exemptions as provided for in the Lobbyist Ordinance of the City of Miami Beach and the Conflict of Interest and Code of Ethics Ordinance. Section 2-11.1 (s) “*Lobbying*,” of the Code of Ethics Ordinance, provides certain exemptions for the term lobbyist:

The term "Lobbyist" specifically excludes the following persons: attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communications; expert witnesses who provide only scientific, technical or other specialized information or testimony in public meetings; any person who only appears as a representative of a **neighborhood association** without compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item; any person who only appears as a representative of a **not-for-profit community based organization** for the purpose of requesting a grant without special compensation or reimbursement for the appearance; and employees of a principal whose normal scope of employment does not include lobbying activities.

Although state and local law provide no legal standard defining “neighborhood association,” it is generally considered an association of residents and businesses within a specifically defined area. Membership, which is voluntary, involves the homeowners, renters, and businesses within the defined neighborhood boundaries. The issues of a neighborhood association are broad, addressing residential and business concerns.

As indicated in your letter, the Association specifically represents the industry concerns of restaurants, hotels and nightclubs on South Beach. Its activities are limited to addressing and representing the concerns of its membership, not the overall community, including residents and other business industries.

The Ethics Commission determined that since the Association’s primary mission is serving the industry

concerns of a specific constituency on South Beach, it does not meet the definition of a “neighborhood association.” Therefore, it is not exempt from the lobbyist registration requirements under the Lobbyist Ordinance of the City of Miami Beach.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director